

Borough of Butler

September 12, 2022

Geoffrey R. Gersten, Deputy Attorney General
Department of Law & Public Safety
Division of Law
Administrative Civil Rights
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Jessica Patterson
Office of Transactions and Public Land Administration &
Watershed Property Review Board
Green Acres Program
NJ Department of Environmental Protection
401 East State Street – 7th Floor
Trenton, NJ 08625

Re: Watershed Property Review Board – Request To Exempt Conveyance of Watershed Property
Involving the Exchange Properties within the Butler Reservoir System with Our Lady of Magnificat
Catholic Church, Kinnelon, NJ

Dear Ms. Patterson and DAG Gersten,

On behalf of the Borough of Butler, please consider this request to the Watershed Property Review Board for an exemption from the Watershed Protection & Moratorium Act (P.L. 1988, c. 163, amended by P.L. 1990, c. 19) for an exchange of properties within the Butler Reservoir System between the Borough and Our Lady of Magnificat Catholic Church (OLM) in Kinnelon, NJ. The conveyance that is the subject of this request is a proposed land exchange involving multiple parcels which has been in a public planning stage for a period of years, with Butler, Kinnelon, OLM and the Diocese of Paterson all supporting what the parties agree will be an even acre for acre exchange. The proposed exchange has been discussed at Borough Council meetings and the Council supports moving forward with this exchange, as indicated in the attached letter of June 3, 2021.

Please consider this exemption request for the upcoming October 27, 2022 Watershed Property Review Board and please incorporate into our request the documents, photos and mapping provided to you in advance of our June 6, 2022 meeting and property visit at OLM that was also attended by representatives of OLM, the Board of Public Utilities (BPU) and additional legal counsel from the Division of Law & Public Safety. We appreciated everyone's participation and input at the June 6th meeting and subsequent property visit. Both the Borough and

One Ace Road, Butler, New Jersey 07405

Borough Offices: (973) 838-7200
Fax: (973) 838-3762

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Fax: (973) 838-3454

OLM are hopeful that the meeting helped clarify the purpose of the conveyance, the details of the exchange and the basis for this exemption request, in support of the package of information previously submitted.

As discussed at our June 6th meeting and as the information package indicates, both Butler and OLM have invested significant time and resources over the years to come up with the current series of parcels for the proposed property exchange. In fact, two appraisals were undertaken to evaluate the parcels since the parties decided they should seek an even value/acre-for-acre exchange. Both appraisals and accompanying backup documents were provided as part of the package submitted earlier.

The properties involved are within or adjacent to the Butler Reservoir System. This exchange will provide Butler with ownership of a key 30.845 ac watershed parcel currently held by OLM, that connects two of the Borough's reservoirs and it will enable the Borough to consolidate management of these combined watershed parcels bordering a residential area. Consolidating ownership and control will enable holistic management of the connecting water features, including the wetlands, riparian corridor and transition area on this parcel. The exchange will improve the ability of Butler to administer its reservoir system into the future. In addition, the three parcels Butler is conveying to OLM in exchange for the 30.845 ac are arguably watershed properties, but they are located in areas upland to the reservoir system and OLM has agreed to impose conservation restrictions for the majority of these parcels. As detailed below, this proposed land exchange should therefore qualify for an exemption from the Watershed Protection & Moratorium Act.

The attached aerial survey map prepared by DAB Surveying depicts the parcels/acreage the parties are seeking to exchange. The 30.845 acre parcel currently held by OLM in Kinnelon that connects the reservoir waterbodies is depicted as parcel #1. To obtain this key parcel, Butler will convey three smaller parcels to OLM totaling 30.845 ac and depicted as parcel # 2 (2.835 ac), #3 (12.120 ac) and #4 (15.09 ac). The characteristics of these properties and the proposed exchange is summarized in a 9/27/2019 opinion provided by an environmental engineering and consulting firm, Matrix New World Engineering, PC (also included in previous submission package). Since all of the lands either adjoin the Butler Reservoir System or have characteristics as wetlands or watershed properties, they would all be subject to current regulatory programs and restrictions that would make future development very unlikely on any of the acreage that Butler will be conveying to OLM. In addition, the Borough has made it a condition of the exchange with OLM that there will be no commercial or residential buildings. Butler understands that OLM will eventually be seeking to expand its current cemetery onto part of the 12.12 ac of parcel #3, since it adjoins OLM's existing cemetery grounds. According to OLM, the cemetery, which is open to all faiths will be at capacity with very limited spaces to service the community starting in 2023 (see attached OLM correspondence dated 9/1/21 and provided in submitted package). While parcel #3 is part of the watershed lands, it is in an upland buffer zone that could accommodate some cemetery expansion. The cemetery has been serving Butler and surrounding communities and the Borough would support a future expansion that is in conformance with required permitting and mitigation programs for protecting the reservoir watershed. The potential for OLM to proceed in the future through the regulatory processes for a cemetery expansion to this adjoining property should not impact this exemption request, especially considering the condition agreed to by OLM and Butler that there will be no commercial or residential development on any of the parcels involved in the exchange.

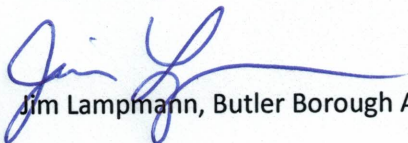
Butler is basing its request to the Watershed Property Review Board for an exemption from the Watershed Protection and Moratorium Act on two of the three circumstances for which an exemption can be granted by the Board, including consistency with the Board's past published decisions. This proposed land exchange between Butler and OLM has a basis for a moratorium exemption pursuant to the statute's second and third

exemption justifications: "(1) that there is a compelling public need for the conveyance of the property," and "(3) the sale or development of the watershed property is otherwise consistent with the purposes of the act," which is to protect water quality and encourage open space preservation. The proposed exchange of properties is not a sale of watershed properties by Butler and it will enable the Borough to consolidate management authority for the protection of a key watershed property that hydraulically connects two reservoirs and it will not put any of the other water supply properties at risk – this fulfills the exemption's requirement that the exchange is "otherwise consistent with the purposes of the act." The 30.845 parcel is located in a valley that contains critical wetlands, an intermittent pond and a riparian corridor. The property is bordered by residential development on the northwest slope and over the years there have been impacts caused by off-road vehicle use and access for potential dumping. The exchange of properties will help Butler better manage this sensitive area that connects the reservoir system and it will help to prevent potential degradation of this recharge area, the reservoirs and overall water quality. The watershed parcels conveyed by Butler to OLM in exchange for the 30.845 ac will be restricted to remain as protected open space, with the exception of a portion of the 12.12 ac upland area of parcel #3 should OLM proceed through the regulatory processes to expand the adjacent cemetery.

Both Butler and OLM have worked diligently over a the years on this proposed exchange and the parties maintain that the proposed exchange is consistent with the purposes of the Watershed Protection and Moratorium Act, since it will promote better protection of a public water supply. The exchange will improve the comprehensive management and control of the sensitive 30.845 parcel that hydraulically connects two reservoir waterbodies and it will continue the protections on the other involved parcels. This will result in a positive/net gain for the overall public water supply and watershed lands at a time when the region's water supply is coming under stress due to climate change issues. The increased management and protection of important watershed lands proposed through this exchange satisfies the exemption's requirement for a "compelling public need." This exchange will also help fulfill an important community need associated with the services provided to surrounding communities by OLM's cemetery if it is able to be expanded in the future.

Thank you for your consideration of this request to the Watershed Property Review Board for an exemption from the Watershed Protection & Moratorium Act. Butler along with representatives of OLM will be available to respond to any questions or requests for additional information for the Board's review of this land exchange. We will also be available for the Board meeting that is scheduled for October 27th should we need to attend.

Respectfully,



Jim Lampmann, Butler Borough Administrator

Attachment

cc: Rev. Stephen Shadwell, Our Lady of the Magnificat
Robert Kerris, Our Lady of the Magnificat
Martin McHugh

Via Email

December 12, 2022

Our Lady of the Magnificat
2 Miller Road
Kinnelon, NJ 07405

ATTN: George Casagrand, Business Administrator

RE: PROPOSED LAND EXCHANGE WITH BOROUGH OF BUTLER
P/O BLOCK 34401, LOT 102 (OUR LADY OF THE MAGNIFICANT)
P/O BLOCK 34401, LOT 104 & P/O BLOCK 33901, LOT 102 (BOROUGH OF BUTLER)

Dear Mr. Casagrand:

The Borough of Butler (“Borough”) proposes to exchange lands with the Diocese of Paterson (“Diocese”) in the Borough of Kinnelon. The exchange would involve equal quantities of land within the above-referenced properties. Proposed exchange parcels, which would be created by subdividing/consolidating each parties’ parent property, are illustrated on an “Exchange Map” (see excerpt below) entitled, “*Proposed Land Swap, Our Lady of the Magnificat & Borough of Butler, Miller Road, Borough of Kinnelon, Morris County, New Jersey*,” prepared by DMC Associates, Inc. Land Surveyors and are summarized below. All of the properties involved fall within the New Jersey Highlands Water Protection & Planning Act (“Highlands Act”). It also appears that the properties are subject to the New Jersey Watershed Protection & Moratorium Act and as such, an exemption from the Watershed Property Review Board will need to be granted to Butler in order for this exchange to proceed.

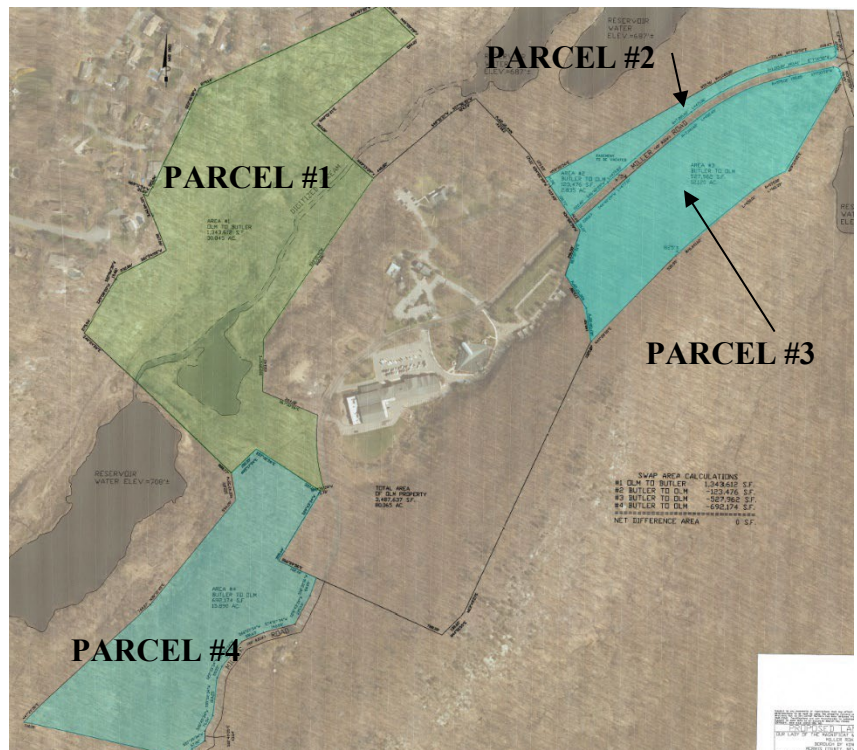
Diocese Property to Borough

- Parcel #1 – 30.960 Ac.

Borough Property to Diocese

- Parcel #2 – 2.826 Ac.
- Parcel #3 – 12.137 Ac.
- Parcel #4 – 15.997 Ac.

Difference in area – 0 Ac.



Summary of Property to be Acquired by Borough

Parcel #1 lies west of Miller Road and is bound on the north and south by Butler reservoir water bodies that are connected to each other by a small stream and intervening lake. The lake and stream lie in a valley between the Diocese development and residential development. NJDEP's GEOWEB database shows that there are wetlands on the property, centered around the stream and lake (see image below – wetlands shaded blue).



The property to be acquired from the Diocese provides the Borough with a physical link between its reservoirs. This acquisition resolves potential physical and regulatory challenges associated with reservoir and watershed lands management, including compliance with NJDEP Dam Safety regulations that may require actions and maintenance on Parcel #1 (which Butler does not presently own). Ownership of Parcel #1 by the public also promotes responsible watershed management for safe drinking water supply. Additionally, the acquisition of this property by Butler will eliminate the need for the easement that provides access for the Borough to the two water bodies and connecting stream.

Summary of Property to be Acquired by Diocese

- Parcel #2 lies on the west side of Miller Road, between the rectory and Fayson Lakes Road and is contiguous to Parcel #1. It is narrow and has steep slopes descending toward the aforementioned streams. It has no development potential.
- Parcel #3 lies on the east side of Miller Road between the existing cemetery and Fayson Lakes Road. The upland parcel is mostly forested with some rocky out-croppings. It contains some flat areas, but generally has steep slopes that extend up toward the adjoining properties. Its overall development potential is limited, but the flat areas present opportunity for future cemetery expansion.
- Parcel #4 lies on the west side of Miller Road, south of the rectory property. It is contiguous to the Butler reservoir property and has topography that descends toward the reservoir. It is also mostly forested with limited development potential near the road.

It is our understanding that as part of this exchange, the Diocese is agreeing to conservation easements and deed restrictions on parcels #2, 3 & 4 to address any potential future building or infrastructure expansion. These restrictions coupled with ability of Butler to consolidate management of reservoir properties through ownership of parcel #1, will result in a net benefit to the reservoir system and public watershed properties.

The exchange will also enable the Diocese to initiate the necessary regulatory processes in the future, to expand its existing cemetery, which is nearing capacity onto Parcel 3, with these considerations:

1. The parcel is directly adjacent to the existing cemetery.
2. The property has areas of mild slopes along Miller Road that will facilitate potential expansion of the cemetery on a portion of the parcel.
3. The NJDEP Highlands Act regulations include an exemption for any development associated with a place of worship which would include an expansion of the existing cemetery.
4. Any future expansion would be undertaken in accordance with existing NJDEP regulatory permitting programs, with the use of best management practices for cemetery development in order to protect groundwater and surface water resources.
5. Approvals for any future expansion may require forestry mitigation on the parcel or on other Diocese or watershed properties, depending on the configuration of the expansion.

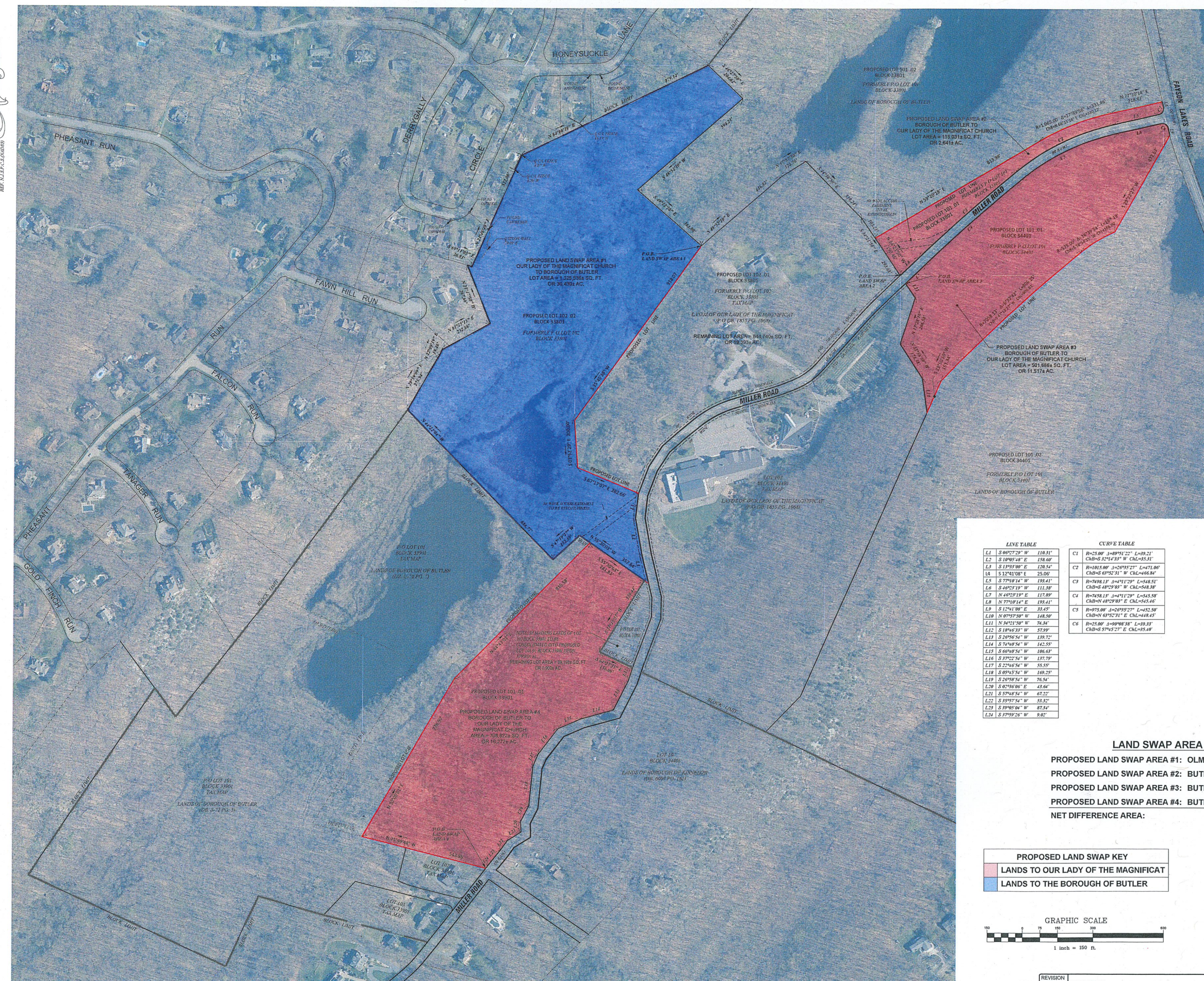
In summary, as a result of the proposed transfer, the Diocese will receive a property (Parcel 3) which will enable cemetery expansion plus two parcels that are environmentally sensitive with any potential future development to be restricted. This will be in exchange for a single parcel that has a high environmental sensitivity as it contains wetlands, riparian areas and groundwater recharge features in addition to its proximity and hydraulic connection to two separate 2 reservoir waterbodies etc.). The effect of this transfer will be a net public environmental gain, benefiting the reservoir system and Butler's ability to consolidate overall management and protection of watershed properties. The Diocese would acquire a parcel that is conducive to cemetery expansion in accordance with applicable regulatory programs and mitigation requirements at the time of any proposed development. This would obviously necessitate an investment of financial resources by the Diocese to improve the property for said cemetery. Lastly and in terms of viewing this exchange from an acre-to-acre value, the Borough of Butler and the Diocese would be exchanging an equal area of land that is also equal in market value, based on the appraisals undertaken by the Diocese.

Should you have any questions, or require any additional information, please feel free to contact me at (908) 229-6303 or via email at araichle@mnwe.com.

Very truly yours,



Vice President



SURVEYOR'S NOTES:
The retracement of the boundaries depicted herein by the surveyor is based upon record information and does not constitute an independent survey of the subject parcels. Any representation herein is not to publish any disclaimer of title of the subject property or adjoining land owners. The ultimate user of this map shall have acknowledged that this map could be made public and that the surveyor and company have no fiduciary duty or confidentiality obligation to the client or users.
This map was prepared without the benefit of a full title abstract search.

MAP REFERENCE:
"Map of Property, Lots 117, 117.01 & 117.02 in Block 38, Prepared For Our Lady of the Magnificat Church, in the Borough of Kinross, Morris County, New Jersey" Sheet 2 of 6, dated March 24, 2004 and prepared by Hanson Engineering.

DEED REFERENCE:
- Deed Conveyance from Roman Catholic Diocese of Paterson to Our Lady of the Magnificat dated November 29, 1962 and recorded in the Morris County Registers Office on December 4, 1962 in Deed Book 1855 Page 1068.
- Roadway and Easement Dedication from Our Lady of the Magnificat to Borough of Kinross dated March 24, 1964 and recorded in the Morris County Registers Office on July 15, 1964 in Deed Book 1910 Page 413.
- Slope, Drainage and Temporary Construction Easement from Our Lady of the Magnificat to Borough of Kinross dated September 27, 1999 recorded in the Morris County Registers Office on November 10, 1999 in Deed Book 3063 Page 216.
- Roadway Vacation from Borough of Kinross to Our Lady of the Magnificat dated September 27, 1999 recorded in the Morris County Registers Office on November 29, 1999 in Deed Book 3092 Page 282.
- Roadway Dedication from Our Lady of the Magnificat to Borough of Kinross dated September 27, 1999 recorded in the Morris County Registers Office on November 29, 1999 in Deed Book 3092 Page 288.

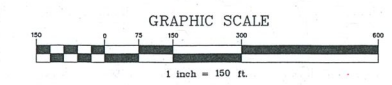
LINE TABLE		CURVE TABLE	
L1	S 00°27'29" W 110.31'	C1	R=25.00' Δ=89°51'22" L=49.21' ChB=S 32°14'38" W ChL=35.31'
L2	S 10°05'48" E 158.60'	C2	R=1015.00' Δ=26°45'23" L=471.06' ChB=S 67°52'31" W ChL=466.80'
L3	S 13°53'00" E 120.54'	C3	R=7498.13' Δ=91°11'29" L=548.51' ChB=S 48°29'03" W ChL=548.38'
L4	S 12°41'08" E 25.00'	C4	R=7458.13' Δ=91°11'29" L=545.58' ChB=N 48°29'03" E ChL=545.46'
L5	S 77°10'14" W 109.41'	C5	R=973.00' Δ=20°45'23" L=452.50' ChB=N 67°52'31" E ChL=468.45'
L6	S 40°23'19" W 111.38'	C6	R=25.00' Δ=89°08'38" L=39.33' ChB=S 57°45'27" E ChL=35.40'
L7	N 40°23'19" E 117.89'		
L8	N 77°10'14" E 109.41'		
L9	S 12°41'08" E 33.45'		
L10	N 07°57'50" W 148.50'		
L11	N 34°21'50" W 74.34'		
L12	S 18°46'33" W 57.99'		
L13	S 26°56'54" W 139.72'		
L14	S 74°48'54" W 142.55'		
L15	S 60°48'54" W 106.49'		
L16	S 37°22'54" W 137.79'		
L17	S 22°46'54" W 55.55'		
L18	S 05°45'54" W 169.25'		
L19	S 26°58'54" W 76.54'		
L20	S 82°58'00" E 48.84'		
L21	S 57°46'54" W 67.22'		
L22	S 35°59'54" W 53.32'		
L23	S 39°05'04" W 87.34'		
L24	S 37°59'26" W 9.02'		

LAND SWAP AREA SUMMARY

PROPOSED LAND SWAP AREA #1: OLM TO BUTLER = 30.430± ACRES
PROPOSED LAND SWAP AREA #2: BUTLER TO OLM = -2.641± ACRES
PROPOSED LAND SWAP AREA #3: BUTLER TO OLM = -11.517± ACRES
PROPOSED LAND SWAP AREA #4: BUTLER TO OLM = -16.272± ACRES
NET DIFFERENCE AREA: 0 ACRES

PROPOSED LAND SWAP KEY

LANDS TO OUR LADY OF THE MAGNIFICAT
LANDS TO THE BOROUGH OF BUTLER



REVISION	DATE	DESCRIPTION	BY
04/13/2023		LOCATION OF IMPROVEMENTS ALONG NWLY PROPERTY LINE	ZM

MAP OF PROPOSED LAND SWAP

BETWEEN THE BOROUGH OF BUTLER AND OUR LADY OF THE MAGNIFICAT CHURCH LOCATED IN THE BOROUGH OF KINNELON, MORRIS COUNTY, NEW JERSEY

DMC ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
6 CAREY AVENUE, BUTLER, NJ 07405
TEL: (973) 835-8157 FAX: (973) 835-4359 INFO@DMCSURVEYING.COM

Digitally signed by Robert Cigol
Date: 2023.04.14 12:28:28 -04'00'

ROBERT L. CIGOL, N.J.P.L.S. No. 24GS04026100
CERTIFICATE OF AUTHORIZATION No. 24GA27919000

DRAWN BY: ZM	SCALE: 1"=150'	DATE: 03/14/2023	SHEET NO.: 1 OF 1	DWG NO.: 2303018
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